



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

DOCKET CLERK
P.O. DRAWER 800889
DALLAS TX 75380

MAILED

MAR 12 2010

OFFICE OF PETITIONS

In re Application of :
Wybenga, et al. : DECISION ON APPLICATION
Application No. 10/658,977 : FOR
Filed: September 10, 2003 : PATENT TERM ADJUSTMENT
Docket No. 2003.09.014.BN0 :

This is a decision on the "GOOD FAITH AND CANDOR LETTER REGARDING PATENT TERM ADJUSTMENT," filed June 9, 2009. Applicants request that the initial determination of patent term adjustment be corrected from eight hundred (800) days to four hundred twenty-one (421) days.

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED to the extent indicated herein.**

The Office has updated the PALM screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is SIX HUNDRED TWENTY-FIVE (625) days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On March 9, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 800 days. On June 9, 2009, applicants timely¹ submitted an application for patent term adjustment. Pursuant to applicants' authorization, deposit account no. 50-0208 will be charged the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Applicants' bases for correction of the patent term adjustment have been considered and found persuasive to an extent.

¹ The Issue Fee payment was also received on June 9, 2009.

Applicants are correct that the patent term adjustment should be reduced by 175 days because there was no Office delay in connection with the mailing of a Notice of Allowance on March 9, 2009. A request for continued examination was filed on February 2, 2009. On March 9, 2009, the Office mailed a Notice of Allowance. Thus, there was no delay pursuant to 37 CFR 1.702(a)(2). Accordingly, the adjustment of 175 days for Office delay is being removed.

Applicants are incorrect with respect to two other calculations.

First, applicants assert that the Office should have entered a period of adjustment of 249 days, rather than 287 days, for the delay associated with the mailing of a final Office action on September 17, 2007. On August 4, 2006, applicants filed an amendment after final. On September 11, 2006, applicants filed a request for pre-appeal conference and notice of appeal. On December 5, 2006, the Office mailed a Notice of Panel Decision from Pre-Appeal Brief Review that stated the application was allowable and that a Notice of Allowance would be mailed. In addition, it stated that Claims 1-22 were rejected. On September 17, 2007, the Office mailed a final Office action.

Given the decision by the panel, applicants were properly accorded 287 days for Office delay in mailing a final Office action after the August 4, 2006 amendment. The August 4, 2006 amendment was treated as in compliance with 37 CFR 1.113(c). Pursuant to 37 CFR 1.702(a)(2), the proper calculation is from the day after four months after August 4, 2006, December 5, 2006, to the date the final Office action was mailed, September 17, 2007. Therefore, the 287 day adjustment for Office delay in mailing a final Office action on September 14, 2007 is proper.

Second, applicants assert that the Office should have entered a period of reduction of 166 days for the delay associated with the filing of an amended appeal brief on October 28, 2008. Applicants are reminded that an appeal brief is not a reply to an Office action. The filing of a defective appeal brief is not an omission within the meaning of 37 CFR 1.704(c)(7). Thus, no reduction is warranted.

In view thereof, the correct determination of PTA at the time of the mailing of the notice of allowance is **six hundred twenty-**

five (625) days (404 + 287 days for Office delay minus 66 days for applicant delay).

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Senior Petitions Attorney Shirene Willis Brantley at (571) 272-3230.

A handwritten signature in black ink, appearing to read "Nancy Johnson", is written over the typed name and title.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of adjusted PALM calculation

Day : Wednesday

PALM INTRANET

Date: 3/10/2010

Time: 13:21:19

PTA Calculations for Application: 10/658977

Application Filing Date:	09/10/2003	PTO Delay (PTO):	866
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	66
Post-Issue Petitions:	0	Total PTA (days):	625
PTO Delay Adjustment:	-175		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
83	03/10/2010	ADJUSTMENT OF PTA CALCULATION BY PTO		175	
68	03/09/2009	MAIL NOTICE OF ALLOWANCE	175		44
67	03/03/2009	ISSUE REVISION COMPLETED			
66	03/03/2009	DOCUMENT VERIFICATION			
65	03/03/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
64	03/02/2009	NOTICE OF ALLOWABILITY			
63	02/02/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
62	02/02/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
61	02/02/2009	REFERENCE CAPTURE ON IDS			
60	02/02/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
59	02/05/2009	DATE FORWARDED TO EXAMINER			
58	02/02/2009	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
57	02/05/2009	DATE FORWARDED TO EXAMINER			
56	02/02/2009	REQUEST FOR CONTINUED EXAMINATION (RCE)			
55	02/05/2009	DISPOSAL FOR A RCE / CPA / R129			
54	02/04/2009	NOTICE -- DEFECTIVE APPEAL BRIEF			
53	02/02/2009	WORKFLOW - REQUEST FOR RCE - BEGIN			
52	11/13/2008	APPEAL BRIEF REVIEW COMPLETE			
51	11/13/2008	DATE FORWARDED TO EXAMINER			
50.1	10/28/2008	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
50	10/28/2008	APPEAL BRIEF FILED			

49	10/06/2008	NOTICE -- DEFECTIVE APPEAL BRIEF			
48	09/24/2008	CASE DOCKETED TO EXAMINER IN GAU			
47	06/17/2008	CASE DOCKETED TO EXAMINER IN GAU			
46	05/20/2008	APPEAL BRIEF REVIEW COMPLETE			
45	05/20/2008	DATE FORWARDED TO EXAMINER			
44.1	05/15/2008	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
44	05/15/2008	APPEAL BRIEF FILED			
43	04/11/2008	MAIL APPEALS CONF. PROCEED TO BPAI			
42	04/08/2008	PRE-APPEALS CONFERENCE DECISION - PROCEED TO BPAI			
41	03/11/2008	CASE DOCKETED TO EXAMINER IN GAU			
40	02/21/2008	REQUEST FOR PRE-APPEAL CONFERENCE FILED			
39	02/21/2008	NOTICE OF APPEAL FILED		66	33
38	02/21/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
37	01/23/2008	MAIL ADVISORY ACTION (PTOL - 303)			
36	01/22/2008	ADVISORY ACTION (PTOL-303)			
35	12/03/2007	DATE FORWARDED TO EXAMINER			
34	11/16/2007	AMENDMENT AFTER FINAL REJECTION			
33	09/17/2007	MAIL FINAL REJECTION (PTOL - 326)	287		20
32	09/14/2007	FINAL REJECTION			
31	12/05/2006	MAIL APPEALS CONF. PROCEED TO BPAI			
30	12/01/2006	PRE-APPEALS CONFERENCE DECISION - PROCEED TO BPAI			
26	09/11/2006	REQUEST FOR PRE-APPEAL CONFERENCE FILED			
24	09/11/2006	NOTICE OF APPEAL FILED			
23	08/23/2006	MAIL ADVISORY ACTION (PTOL - 303)			
22	08/21/2006	ADVISORY ACTION (PTOL-303)			
21	08/09/2006	DATE FORWARDED TO EXAMINER			
20	08/04/2006	AMENDMENT AFTER FINAL REJECTION			
19	06/07/2006	MAIL FINAL REJECTION (PTOL - 326)			
18	05/30/2006	FINAL REJECTION			
17	03/22/2006	DATE FORWARDED TO EXAMINER			
16	03/14/2006	RESPONSE AFTER NON-FINAL ACTION			
15	12/19/2005	MAIL NON-FINAL REJECTION	404		-1
14	12/12/2005	NON-FINAL REJECTION			

13	11/30/2005	CASE DOCKETED TO EXAMINER IN GAU			
12	11/21/2005	CASE DOCKETED TO EXAMINER IN GAU			
11	09/14/2005	CASE DOCKETED TO EXAMINER IN GAU			
10	02/11/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
9	02/11/2004	CASE DOCKETED TO EXAMINER IN GAU			
8	01/31/2004	APPLICATION RETURN FROM OIPE			
7	01/31/2004	APPLICATION RETURN TO OIPE			
6	01/31/2004	APPLICATION DISPATCHED FROM OIPE			
5	02/02/2004	APPLICATION IS NOW COMPLETE			
4	01/23/2004	CLEARED BY OIPE CSR			
3	01/23/2004	CASE CLASSIFIED BY OIPE			
2	01/19/2004	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	09/10/2003	INITIAL EXAM TEAM NN			

Search Another: Application#

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back, right click here and select Back. To go forward, right click here and select Forward. To refresh, right click here and select Refresh.

Back to [OASIS](#) | [Home page](#)